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Reports of Malaysian and Singapore Cases

DETERMINED BY

THE HIGH COURTS

AND BY

THE FEDERAL COURT

AND THE

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

LIEW SAI WAH v. PUBLIC PROSECUTOR

[P.C. (Viscount Dilhorne, Lord Hodson & Lord Upjohn) February 12, 1968]

[Privy Council Appeal No. 2 of 1967]

Internal Security — Possession of component parts of hand grenades — Grenade bodies not 'ammunition' — Internal Security Act, 1960, ss. 2 & 57(1).

Criminal Law and Procedure — New ground advanced before Judicial Committee — Leave for — Error in nomenclature — Whether accused misled — Criminal Procedure Code (Cap. 132), ss. 155 and 156.

This was an appeal from the decision of the Federal Court affirming the appellant's conviction and death sentence under section 57(1) of the Internal Security Act, 1960. The appellant was found at the railway station in Singapore to be in possession of six grenade bodies. He was charged for having had in his possession in a security area, "ammunition, to wit six hand grenades, without lawful excuse and without lawful authority". At the trial, expert evidence was given to the effect that the grenade bodies were not complete grenades and could not explode unless used together with other explosives. The appellant's case was that the grenade bodies did not come within the definition of the word 'ammunition' in section 2 of the Internal Security Act. The High Court ruled against him on the ground that as the grenade bodies were designed to contain a noxious thing, they were ammunition within the meaning of the Act.

At the hearing before the Judicial Committee, counsel for the respondent sought leave to advance an additional ground, namely, that if the grenade bodies were not 'ammunition' they were 'explosives' as defined in section 2 of the Act, and the appellant was not misled by the error in their description.

Held, allowing the appeal: (1) while it is clear that the definition of the word 'ammunition' includes grenades and that a grenade designed to contain or adapted to contain any noxious liquid, gas or other thing is covered by it, even if empty of that noxious liquid, gas or other thing — there is nothing in the definition to indicate that it was intended to cover not only grenades but parts of grenades such as grenade bodies;

(2) leave to advance the additional ground for the first time before the Judicial Committee was refused as the Board felt that in all the circumstances of the case it was not right to do so.

Cases referred to:—

(1) *L.N.E. Ry. Co.* v. *Berriman* [1946] A.C. 278.

(2) *Lee A Ba* v. *Public Prosecutor* [1968] 1 M.L.J. 148 at p. 155.

PRIVY COUNCIL.

T. O. Kellock Q.C. and *Ian Baillieu* for the appellant.

T. C. Le Quesne Q.C. and *S. N. McKinnon* for the respondent.

Viscount Dilhorne (delivering the reasons for the decision of the Board): On 21st March 1965 the appellant got off a train at Singapore Station carrying a B.O.A.C. travelling bag. He was stopped by the police and in the bag were found six hand grenade bodies.

He was arrested and charged and on 18th November 1965 convicted in the High Court at Singapore of having had in his possession in a security area on 21st March 1965 "ammunition, to wit six hand grenades, without lawful excuse and without lawful authority". He was sentenced to death under the provisions of section 57(1) of the Internal Security Act 1960 which is as follows:—

> "Any person who without lawful excuse, the onus of proving which shall be on such person, in any security area carries or has in his possession or under his control
>
> (a) any fire-arm without lawful authority therefor; or
>
> (b) any ammunition or explosive without lawful authority therefor
>
> shall be guilty of an offence against this Part and shall be punished with death."

Section 2 of the Act defines "ammunition" in the following terms:—

> " 'ammunition' means ammunition for any fire-arm as hereafter defined and includes grenades, bombs and other like missiles whether capable of use with such a fire-arm or not and any ammunition containing or designed to contain or adapted to contain any noxious liquid, gas or other thing:"

At the trial before Choor Singh J. who sat without a jury, expert evidence was given by a

Sergeant Clifton, then attached to the Ammunition Inspectorate. He gave evidence to the effect that the grenade bodies found in the possession of the accused were bodies of British 36 M grenades; that grenades unless they were drill or dummy grenades had their explosive in them and that the bodies found in the appellant's possession were not the bodies of drill or dummy grenades. He said that they were not complete grenades as they lacked levers, safety pins, detonators and base plugs. He had not opened the grenade bodies but said that grenades of this type were normally filled with an explosive called Baratol. No evidence was given at the trial proving that the grenade bodies were filled with an explosive. He said that if the bodies found in the appellant's possession were used with other explosives, they would still explode and cause damage. This assumes, of course, that they were filled with explosive. It is clear from his evidence that lacking detonators and other parts, these grenade bodies would not have exploded when thrown and when the safety pin was taken out and the lever released in the way that complete grenades of this type do.

At the trial counsel for the appellant submitted that grenade bodies did not come within the definition of ammunition in the Act and that he had, consequently, no case to answer.

Choor Singh J. ruled against him. He said:—

"The word 'ammunition' which appears in the fourth line of the definition, in my opinion includes grenades. Therefore a grenade containing or designed to contain any noxious thing comes within the definition of ammunition.

In this case the evidence shows that the six grenade bodies found in the accused's bag were designed to contain Baratol which is a noxious thing. The grenade bodies are therefore ammunition within the meaning of the Internal Security Act 1960."

While it is clear that the definition in the Act of the word "ammunition" includes grenades and that a grenade designed to contain or adapted to contain any noxious liquid, gas or other thing is covered by it, even if empty of that noxious liquid gas or other thing — there is nothing in the definition to indicate that it was intended to cover not only grenades but parts of grenades such as grenade bodies.

The appellant appealed to the Federal Court of Malaysia. Dealing with the submission that grenade bodies did not constitute ammunition as defined, that court said:—

"On this aspect of the case it is necessary to consider Sergeant Clifton's evidence which was that these six hand grenades were British 36 M grenades but they had no levers, safety pins or detonators attached to them. They were grenades which are fitted with a high and powerful explosive called Baratol and they all had Indonesian markings. If levers, safety pins and detonators were attached to them they could be used.

All grenades have their explosives inside them unless they are drill or dummy ones which these were not. If these 6 grenades bodies were used together with other explosives they would still explode and cause damage although they were without their component parts.

In the light of this evidence we are of the opinion that the 6 grenades bodies come within the definition of 'ammunition' referred to above."

The Federal Court did not comment on the opinion expressed by Choor Singh J. but from this passage it appears that they based their conclusion on the ground that the grenade bodies if used together with other explosives would still explode and cause damage. As has been said, no evidence was given at the trial that these bodies were filled with explosive. Sergeant Clifton said that it was possible to remove Baratol from a grenade and that he had not opened these bodies.

If they did contain explosive and would have exploded if used with other explosives, it does not follow that they came within the definition. Whether or not they did so, does not depend on whether they would explode if so used. The definition makes it clear that an empty grenade would be covered by it.

The Internal Security Act is a penal Act and must be construed strictly. In *Halsbury's* Laws of England Vol. 36 page 415 paragraph 631 the following appears:—

"It is a general rule that penal enactments are to be construed strictly and not extended beyond their clear meaning. At the present day, this general rule means no more than that if, after the ordinary rules of construction have first been applied as they must be, there remains any doubt or ambiguity, the person against whom the penalty is sought to be enforced is entitled to the benefit of the doubt."

As Lord Simonds said in *L.N.E. Ry. Co.* v. *Berriman* [1] at page 313:—

"A man is not to be put in peril upon an ambiguity, however much or little the purpose of the Act appeals to the predilection of the Court."

The definition of "explosive" in section 2 of the Internal Security Act includes:—

"any material for making an explosive and any apparatus, machine, implement or material used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive, and any part of any such apparatus, machine or implement."

The definition of "fire-arm" in the same section includes "any component part of any such weapon as aforesaid."

If it had been intended that the definition of ammunition should include any component part of a grenade, that could easily have been stated. The omission to do so is not only significant when compared with the definition of "explosive" and "fire-arm". In 1958 the Malayan Corrosive and Explosive Substances and Offensive Weapons Ordinance was made. In that Ordinance "explosive substance" was defined to include any bomb or grenade "and any part of such bomb, grenade . . . ."

In their Lordships' opinion the definition in section 2 of ammunition is not wide enough to cover and does not cover grenade bodies alone. Mr. Le Quesne for the respondent contended that as the latter part of the definition covered grenades which were not filled but were designed or adapted to contain any noxious thing, the definition went further than applying to a complete grenade only. While recognising that the definition applies to grenades which are not filled, it does not follow from that that it applies to the component parts of a grenade.

At the hearing before the Judicial Committee, Mr. Le Quesne sought leave to advance an additional ground in support of the respondent's case, namely that "if the six grenade bodies were not 'ammunition' as defined by section 2 of the said Act, they were 'explosives' as defined by the said section, and the appellant was not misled by the error in their description". He sought to contend that the grenade bodies came within that part of the definition of "explosive" quoted above and he also referred to the case of *Lee A Ba* v. *The Public Prosecutor* [2] where the appellant was convicted under the Internal Security Act of having in his possession "ammunition to wit, two hand grenade detonators".

In that case their Lordships accepted the submission that detonators were explosives according to the definition and not ammunition. It would not have been necessary to consider whether grenade detonators came within the definition of "explosive" if the definition of "ammunition" could have been interpreted as applying to parts of a grenade. Their Lordships were of the opinion that the error in nomenclature was of no significance. Section 156 of the Criminal Procedure Code applicable in that case is in similar terms to section 155 quoted above. In that case it was not contended that the accused was misled and their Lordships held that the error in stating the offence was immaterial and that there was no substance in the defence based on the misdescription of detonators as "ammunition".

In that case it was not suggested that section 57(1)(b) of the Internal Security Act creates not one but two offences, one relating to the possession of ammunition and the other to the possession of explosive.

In their Lordships' opinion the ground now sought to be advanced as a reason for the dismissal of the appeal, and sought to be advanced for the first time at the hearing before the Judicial Committee involves the presentation of a very different case to that the accused had to meet at his trial and to that argued before the Federal Court. In the *Lee A Ba* case, *supra*, the accused knew that he was charged with the possession of detonators. In this case the appellant was charged with the possession of six grenades when what was found in his possession was six grenade bodies. Detonators are expressly included in the definition of "explosive". Grenade bodies and the component parts of grenades are not mentioned in any definition in section 2. If it had been alleged against him at his trial that despite the reference to grenades in the definition of ammunition, both grenades and their component parts were covered by that part of the definition of "explosive" quoted above, it may be, their Lordships express no opinion on the matter, that the appellant would have had some answer to the charge.

Their Lordships refused leave to advance this ground as they did not think it right in all the circumstances that such a ground should be allowed to be advanced for the first time at the hearing before them.

For the reasons stated their Lordships have allowed the appeal.

Appeal allowed.

Solicitors: *Gester & Turner; Charles Russell & Co.*

NATESAN v. GOH GOK HOON

[F.C. (Azmi C.J. (Malaya), Ong Hock Thye F.J. & Raja Azlan Shah J.) February 19, 1968]

[K.L. — Federal Court Civil Appeal No. X 66 of 1966]

Landlord and Tenant — Prohibition against subletting — Subletting of premises — Double rent — Order for recovery of possession — Control of Rent Ordinance, 1956, s. 12(1)(b)(i) & (j), 22 — Civil Law Ordinance, 1956, s. 28(4).

This was an appeal from the judgment of Ismail Khan J. setting aside the decision of the president of the sessions court at Malacca (*sub nom. Goh Gok Hoon* v. *Abdul Hamid & Anor.*, [1967] 1 M.L.J. 36).

The respondent, owner of rent-controlled premises brought an action for recovery of possession of the premises, against the tenant, and the appellant, as subtenant, under section 12(1)(b)(i) and (j) of the Control of Rent Ordinance, 1956. In allowing the appeal from the decision of the sessions court, the High Court held that the tenancy was subject to a prohibition against subletting and that the premises was sublet to the appellant in breach of the condition of the tenancy. An order for the delivery of vacant possession was made against the tenant as well as the appellant on the ground that he was not protected by the provision of section 19 of the Ordinance. It was further ordered that the tenant and the appellant were to pay double rent after sixty days in the event of their holding over.

The appeal to the Federal Court was substantially on three grounds: (1) the learned judge was wrong in finding that there was a prohibition against subletting in the tenancy agreement; (2) he should not have considered section (12)(1)(b) of the Control of Rent Ordinance as the provision was not referred to by the respondent's counsel to the court below; (3) he had no power to order the payment of double rent.

Held, dismissing the appeal: (1) on the perusal of the evidence in the record, the learned judge was right in his finding of fact that there was a prohibition against subletting in the tenancy agreement;